

## APPEAL NO. 010011

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on November 2, 2000. The hearing officer determined issues of injury and disability adversely to the appellant's (claimant) position. The claimant has appealed, and the respondent (carrier) responds that the decision should be affirmed.

### DECISION

A timely appeal not having been filed, the decision and order of the hearing officer have become final pursuant to Section 410.169.

Section 410.202(a) provides that "[t]o appeal the decision of a hearing officer, a party shall file a written request for appeal with the appeals panel not later than the 15th day after the date on which the decision of the hearing officer is received from the division and shall on the same date serve a copy of the request for appeal on the other party." Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 143.3(c) (Rule 143.3(c)) provides that a request for review shall be presumed to be timely filed if it is: (1) mailed on or before the 15th day after the date of receipt of the hearing officer's decision; and (2) received by the Texas Workers' Compensation Commission (Commission) not later than the 20th day after the date of receipt of the hearing officer's decision. Both portions of Rule 143.3(c) must be complied with in order for an appeal to be timely. Texas Workers' Compensation Commission Appeal No. 94065, decided March 1, 1994; Texas Workers' Compensation Commission Appeal No. 941225, decided October 24, 1994; Texas Workers' Compensation Commission Appeal No. 000882, decided May 30, 2000.

Records of the Commission reflect that the hearing officer's decision was distributed to the claimant on December 1, 2000, with a cover letter of the same date. The claimant states in his appeal that he received the hearing officer's decision on December 6, 2000, the same date as the deemed date of receipt under Rule 102.5(d), as amended effective August 29, 1999. The envelope which contained the claimant's appeal bears a postage meter date of December 21, 2000, but was stamped as received by the Commission on January 2, 2001. (Because December 26 was a state holiday, the 20th day would have carried over to December 27, 2000.) It appears that the appeal was mailed to a previous post office box that was closed by the Commission effective September 1, 2000, and the appeal was subsequently forwarded to the correct box by the United States Postal Service. The notice that went out with the hearing officer's decision instructed the appeal to be filed with the correct box.

The claimant's appeal was mailed on the 15th day after receipt of the hearing officer's decision. However, the claimant's appeal was received by the Commission more than 20 days after the claimant received the hearing officer's decision. Therefore, the claimant's appeal is untimely. Section 410.169 provides that a decision of a hearing officer regarding benefits is final in the absence of a timely appeal by a party.

The hearing officer's decision and order have become final under Section 410.169.

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Susan M. Kelley  
Appeals Judge

CONCUR:

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Kenneth A. Huchton  
Appeals Judge

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Philip F. O'Neill  
Appeals Judge